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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,249	07/31/2003	Kenneth J. Ouimet	2297-050CON	4787

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Meschkow & Gresham, PLC
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Phoenix, AZ 85014

EXAMINER

COSIMANO, EDWARD R

ART UNIT	PAPER NUMBER
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3639

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,249

Applicant(s)

OUIMET, KENNETH J.

Examiner

Edward R. Cosimano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
4a) Of the above claim(s) none is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-7 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 7/31/03 & 8/4/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A

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1. Applicant's claim for the benefit of an earlier filing data under 35 U.S.C. § 119(e) and 35 U.S.C. § 120 is acknowledged.

2. The proposed drawing correction filed 04 August 2004 has been approved.

2.1 The combined sheets of drawings filed 31 July 2003 and 04 August 2004 are acceptable.

3. The disclosure is objected to because of the following informalities:

A) applicant must update:

(1) the continuing data on page 1,

with the current status of each of the referenced applications, e.g., --now abandoned--, or --now patent #?--, or --which is abandoned and now serial number #?--, etc.

Appropriate correction is required.

4. The specification and drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification or drawings. Applicant should note the requirements of 37 CFR § 1.74, § 1.75, § 1.84(o,p(5)), § 1.121(a)-1.121(f) & § 1.121(h)-1.121(i).

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if

the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5.1 Claims 1-7 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by O'Brien (WO 95/26007).

5.1.1 In regard to claims 1-5 & 7, O'Brien ('007) teaches selecting a primary goal of, i.e., travel model, that would minimize the travel/economic costs incurred by an enterprise in the normal course of conducting it's business. That is the primary goal or objection function would include considerations about business related travel requirements or operational variables for the enterprise. Whereas as strategic constraint function would be bounded or limited by target values such as the economic/fiscal resources of the enterprise as well as any operational constraints and/or variables of the enterprise. When these two function are combined to form an effective function to optimize the selected primary goal of the enterprise, then the result would be one or more different models/scenarios of operating variables that would satisfy the primary goal of the enterprise in a different manner. Where if multiple scenarios result, then the resultant scenarios must be outputted/displayed/presented to someone or something in a suitable form so that the user may select a scenario that if implemented by the enterprise would achieve the primary goal of the enterprise may be selected.

5.1.2 In regard to claim 6, since some business trips may be of more importance to the enterprise than other business trips, it would be inherent that the operational constraints of the enterprise in O'Brien ('007) would use some sort of weighting scheme in order to distinguish the priority of a particular business trip.

5.2 Claims 1-7 are rejected under 35 U.S.C. § 102(e) as being clearly anticipated by Kosiba et al (2002/0184069).

5.2.1 In regard to claims 1-5 & 7, Kosiba et al ('069) teaches selecting a primary goal of, i.e., hiring model, that would minimize the hiring/economic costs incurred by an enterprise in the normal course of conducting it's business. That is the primary goal or objection function would include considerations about available space and work loads/requirements of the enterprise or operational variables for the enterprise. Whereas as strategic constraint function would be bounded or limited by target values such as the economic/fiscal resources of the

enterprise as well as any operational constraints and/or variables of the enterprise. When these two function are combined to optimize the selected primary goal of the enterprise, then the result would be one or more different models/scenarios that would satisfy the primary goal of the enterprise in a different manner. Where if multiple scenarios result, then the resultant scenarios must be outputted/displayed/presented to someone or something in a suitable form so that the user may select a scenario that if implemented by the enterprise would achieve the primary goal of the enterprise.

5.2.2 In regard to claim 6, since some position in a business may be of more importance to the enterprise than other positions with in the business, it would be inherent that the operational constraints of the enterprise in Kosiba et al ('069) would use some sort of weighting scheme in order to distinguish the priority of a particular position within the business over another position within the business.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR § 1.136(a).

6.1 A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR § 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Response to applicant's arguments.

7.1 All rejections and objections of the previous Office action not repeated or modified and repeated here in have been over come by applicant's last response.

7.2 As per the 35 U.S.C. § 102 rejections, since:

A) the claims do not require that the operation of the claimed invention be affected by the type of data being optimized, the type of data is deemed to be non function descriptive material. Nonfunctional descriptive material cannot render

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nonobvious an invention that would have otherwise been obvious. Cf. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability). Common situations involving nonfunctional descriptive material are:

- a computer-readable storage medium that differs from the prior art solely with respect to nonfunctional descriptive material, such as music or a literary work, encoded on the medium;

- a computer that differs from the prior art solely with respect to nonfunctional descriptive material that cannot alter how the machine functions (i.e., the descriptive material does not reconfigure the computer), or

- a process that differs from the prior art only with respect to nonfunctional descriptive material that cannot alter how the process steps are to be performed to achieve the utility of the invention.

B) applicant is arguing unclaimed distinctions and merits of the disclosed invention and the operation of the prior art, when the claimed invention merely broadly recites an operation that does not require the argued operational distinctions with in the claims.

C) since the instant application is a continuation of application 09/951,344 which is a continuation in part of application 09/084,156 and applicant has not provided evidence that the claimed subject matter as a whole was taught by the 09/084,156 application, the earliest effective filing date that the instant application is entitled to is 9/10/01 and the reference to Kosiba et al (2002/0184069) is prior art.

Hence, applicant's arguments are non persuasive.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Cosimano whose telephone number is (571) 272-6802. The examiner can normally be reached Monday through Thursday from 7:30am to 6:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss, can be reached on (571) 272-6812. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-3600.

8.1 The fax phone number for UNOFFICIAL/DRAFT FAXES is (703) 746-7240.

8.2 The fax phone number for OFFICIAL FAXES is (703) 872-9306.

8.3 The fax phone number for AFTER FINAL FAXES is (703) 872-9306.

04/20/05



Edward R. Cosimano

Primary Examiner A.U. 3629